IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1215 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SWARNA KAUR GOPAL SING SARDAR & 5 - Appellant(s)
Versus
KIMALSING ADELSINGH SISODIYA & 5 - Defendant(s)

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Appearance :
MR NALIN K THAKKER for Appellant(s) : 1 - 6.
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR PV NANAVATI for Respondent(s) : 3,
MR VIBHUTI NANAVATI for Respondent(s) : 3,
DELETED for Respondent(s) : 4,
RULE UNSERVED for Respondent(s) : 5,
MR BR SHAH for Respondent(s) : 6,
MS LILU K BHAYA for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 28/11/2007

ORAL JUDGMENT

1. Appellant-claimants have preferred the present appeal from the award dated 1.1.1990 of Motor Accident Claims Tribunal (Aux.), Himatnagar

in Motor Accident Claims Petition No.199 of 1985 for enhancement of compensation.

2. The deceased victim of the accident was paid Rs.600/- per month as cleaner of the vehicle and, according to deposition of his widow at Ex.52, he was the only bread-winner in the family at the time of his death. It was stated by her that the monthly personal expenditure of her husband was Rs.300/- to Rs.350/- per month. On that basis, the Tribunal came to the conclusion that the family had lost monthly income of Rs.300/- and calculated dependency benefit to be Rs.3,600/- per annum. Having regard to longevity and age of the deceased, multiplier of 15 was applied to count Rs.54,000/- as dependency benefit. Adding to that compensation on other counts, total compensation of Rs.75,000/- was awarded, but it was reduced by 25,000/- as the driver, owner and insurance company of the third vehicle involved in the accident were not joined as parties and it was found to be a case of composite negligence.

3. Learned counsel Mr.Nalin Thakker vehemently argued that deposition of the widow at Ex.52 was misread by the Tribunal insofar as the personal expenditure by the deceased himself was met out of the additional daily allowance of

Rs.25/- which the deceased was getting while on duty. It was pointed out from the deposition of the widow that she had clearly deposed that her deceased husband was paid Rs.600/- per month by way of wages and Rs.25/- per day by way of allowance. It was clearly denied in her cross-examination that the monthly wages included the amount of daily allowance.

4. In view of the above clear factual position on record, the Tribunal was clearly in error in holding that the dependency benefit was Rs.3,600/- per annum. Even taking the minimum figure of two-third of the total income as dependency benefit for the family, the amount would go upto Rs.4,800/- per year and taking the round figure of 5000 per year and applying the multiplier of 15, the dependency benefit has to be enhanced to Rs.75,000/- having the effect of increase in the total compensation by Rs.19,000/- Learned counsel Mr.Nalin Thakker also argued that the amount of 9,000/- for the loss of consortium was also on the lower side in view of the fact that the deceased was a strongly-built young man of 34 years and the future increase in his income was not considered by the Tribunal at all.

5. Learned counsel Mr.Vibhuti Nanavati and Ms.Lilu K. Bhaya, appearing for the insurance

companies, submitted that, even as the insurance companies had not preferred any appeal, the multiplier of 15 adopted by the Tribunal was on the higher side. In view of the above contentions, including the contention that the total amount of compensation ought not to have been reduced by 33.5% only on the ground that the driver, owner and insurance company of the third tanker which had collided afterwards were not joined as parties, it would be just and reasonable to increase the amount of compensation awarded by the Tribunal by Rs.20,000/-. Accordingly, the appeal is partly allowed and the appellants are held to be entitled to recover additional Rs.20,000/- as the amount of compensation, jointly and severally, from the respondents with interest @ 12% per annum from the date of application. However, the rate of interest on the additional sum of compensation shall be reduced to 9% per annum from 01.01.2000. The appeal stands partly allowed accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)